IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Bail Appl..No. 4720 of 2007()

CRIME NO.158/06 OF RAMANKARI POLICE STATION

PETITIONER/ACCUSED:

REGI, AGED 37 YEARS,
S/O. PONNAPPAN, PULIMOOTIL HOUSE, RAMANKARI P.O.,
ALAPPUZHA.

BY ADV. SRI.SAIBY JOSE KIDANGOOR
SRI.BENNY ANTONY PAREL

RESPONDENTS: STATE & COMPLAINANT:

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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA

2. SUB INSPECTOR OF POLICE,
RAMANKARI POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/08/2007, A/W. BA 4723 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 4720 & 4723 of 2007

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Dated this the 6th day of August, 2007

O R D E R

The common petitioner has filed these applications for anticipatory bail apprehending arrest as the second accused in two separate crimes, both registered under the provisions of the Kerala Abkari Act. The crux of the allegations in these crimes is that the principal accused i.e. A1 was found keeping in his possession 3.5 litres of spirit and 7.5 litres of arrack on two different dates, i.e. 25th and 31st December, 2006. The principal accused could not be apprehended as he took to his heels. The F.I.R. was registered. Investigation is in progress. The first accused was arrested on 11.7.2007. On his interrogation the Investigator has come to the conclusion that the petitioner herein is the person who regularly used to supply illicit liquor to the principal accused. Accordingly the petitioner is now arrayed as the second accused. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that identical allegations are being raised in these two crimes without any

justification. The transparent purpose is only to vex and harass the petitioner. There is no material whatsoever except the alleged self serving statement of the first accused to suspect the involvement of the petitioner. Those allegations, it may not be lost sight of, have been raised after a lapse of seven months after the arrest of the principal accused, it is submitted. In these circumstances it is prayed that discretion under Section 438 Cr.P.C. may be invoked in favour of the petitioner.

3. The learned Prosecutor opposes the application. He submits that the investigation reveals that the petitioner has been regularly supplying liquor to the principal accused, from whose possession the contraband articles in these crimes have been seized on the respective dates. The learned Prosecutor submits that custodial interrogation of the petitioner is absolutely necessary and it is not necessary to permit the petitioner to arm himself with an order of anticipatory bail. This is not a fit case where such extra ordinary equitable discretion can or deserves to be invoked, submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition raised by the learned Prosecutor. Powers under Section 438 Cr.P.C. are to be invoked sparingly and in exceptional cases, that too in aid

of justice. It is not to be invoked, at any rate, as a matter of course. In the facts and circumstances of these cases, I do not find any features which can persuade this Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. Even regular bail can be granted to the petitioner only if this court is in a position to entertain both the satisfactions contemplated under Section 41A of the Abkari Act. I am not persuaded to agree that the petitioner deserves to be granted anticipatory bail. The petitioner does not deserve to be permitted to be armed with an order of anticipatory bail as he is involved in both these cases.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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